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## 2002 Decisions

## Opinions of the United States Court of Appeals for the Third Circuit

9-17-2002

# Jimenez v. Comm Social Security

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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NO. 01-4282

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MARIA JIMENEZ,

Appellant,

v.

JOANNE B. BARNHART,  
COMMISSIONER OF  
SOCIAL SECURITY ADMINISTRATION

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
D.C. Civil No. 00-cv-04790  
District Judge: Hon. J. Curtis Joyner

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Submitted Pursuant to Third Circuit LAR 34.1(a)  
July 18, 2002  
Before: McKEE, FUENTES, and ALDISERT, Circuit Judges.

(Opinion Filed: September 17, 2002)

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OPINION OF THE COURT

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McKEE, Circuit Judge.

Maria Jimenez appeals the October 2, 2001 order of the United States District Court for the Eastern District of Pennsylvania granting summary judgment under Fed. R. Civ. P. 56 to the Commissioner of Social Security in Jimenez's lawsuit for benefits under Title II of the Social Security Act. See 42 U.S.C. 401-433. The District Court had jurisdiction pursuant to 42 U.S.C. 405(g). We have jurisdiction under 28 U.S.C. 1291. Because we write only for the parties and the District Court, who are familiar with the circumstances of this litigation, we need not recite the factual or procedural history.

Our review is limited to determining whether the Commissioner's decision is supported by substantial evidence. 42 U.S.C. 2305; see also *Monsour Medical Ctr. v. Heckler*, 803 F.2d 1185, 1190 (3d Cir. 1986). We have reviewed the thoughtful Report and Recommendations of the Magistrate Judge which the District Court approved and adopted, as well as the record submitted in this matter. We agree with the conclusions of the Magistrate Judge and the District Court that substantial evidence on the record supports the Administrative Law Judge's conclusion that Jimenez is not disabled within the meaning of the Act. In particular, we believe that the ALJ's conclusions that Appellant possesses the residual functional capacity to perform sedentary work, and therefore has the ability to perform work as a cashier, assembler, or sorter, and the ALJ's discrediting of the Appellant's testimony and the testimony of Appellant's treating physician are all supported by substantial evidence on the record.

Moreover, because Appellant raised the argument that she is entitled to a closed period of disability for the first time in her objections to the Magistrate Judge's Report and Recommendations, and not in her opening brief, we deem this argument waived. See *Laborers' Int'l Union of N.A. v. Foster Wheeler Corp.*, 26 F.3d 375, 398 (3d Cir. 1994).

For the foregoing reasons, we will affirm the order granting summary judgment to the Commissioner substantially for the reasons stated in the Magistrate Judge's Report

and Recommendation.

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TO THE CLERK:

Please file the foregoing opinion.

By the Court:

/s/ Theodore A. McKee

Circuit Judge